

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TAE-SI KIM, *et al.*,)
vs.)
ADAM B. KEARNEY, *et al.*,)
Plaintiffs,)
Defendants.)
)
Case No. 2:09-cv-02008-PMP-GWF
ORDER

Before the court is Plaintiffs' Memorandum of Costs and Fees (Dkt. #104). In a prior Order (Dkt. #96) following a hearing conducted October 5, 2010, on Plaintiffs' Motion to Compel and for Sanctions for Discovery Violations against Defendant Adam Kearney (Dkt. ##88, 89), Magistrate Judge Leen granted Plaintiffs' Motion to Compel. Defendant Kearney did not oppose the motion or appear at the hearing.

Judge Leen's Order (Dkt. #96) gave Defendant Kearney until October 20, 2010, to serve Plaintiffs with initial disclosures required by Rule 26(a)(1), serve Plaintiffs with full and complete responses to requests for production of documents served July 26, 2010, and provide counsel for Plaintiffs and the court with a mailing address for receipt of pleadings and papers in this case. The order also gave Plaintiffs fourteen days from entry of the order to serve and file a memorandum, supported by the affidavit of counsel, establishing the amount of attorney's fees and costs incurred in bringing the motion. The order specified what should be included in the memorandum and gave Defendant Kearney fourteen days from service of the memorandum of costs and fees to file a responsive memorandum addressing the reasonableness of the costs and fees sought, and any equitable considerations deemed appropriate for the court to consider in determining the amount of costs and fees which should be awarded. The order directed Plaintiffs to serve Defendant Kearney with a copy of the order at the e-mail address Mr. Kearney had provided to accept notices in the case, and to attempt to

1 reach him telephonically to notify him of the entry of this order. The order also required counsel for
2 Plaintiff to file a certificate of compliance outlining the efforts to serve the order on Kearney.

3 Plaintiffs filed a Memorandum of Costs and Fees (Dkt. #104) on October 21, 2010. Defendant
4 Kearney did not file a response, request an extension of time to file a response, and the time for filing a
5 response has long since run. Pursuant to LR 7-2(d), “the failure of an opposing party to file points and
6 authorities in response to any motion shall constitute a consent to the granting of the motion.”¹

7 Plaintiffs seek attorneys fees in the amount of \$8,983.50, and costs in the amount of \$487.50
8 for: (1) costs and fees incurred in attempting to take the deposition of Mr. Kearney noticed for August
9 25, 2010, in which he failed to appear; (2) filing the motion to compel Mr. Kearney’s deposition and for
10 discovery sanctions based on Mr. Kearney’s non-response to discovery; and (3) the hearing conducted
11 October 5, 2010. The memorandum is supported by the declaration of Jodi Donetta Lowry and an
12 attached exhibit which outlines the costs and fees incurred by each attorney or staff member working on
13 this case for the tasks for which sanctions are sought. The affidavit also outlines the experience and
14 hourly rates of the attorneys and staff members involved, and attests that the billing records were
15 reviewed and edited and represent reasonable costs and fees incurred for the tasks described.

16 Having reviewed and considered the matter, the court will award attorneys fees and costs in the
17 amount of \$3,667.25. Plaintiffs’ counsel billed 12.3 hours or \$2,306.50 for filing a nine-page motion to
18 compel with attached exhibits. More than three pages of the nine-page motion consisted of an
19 introduction, statement of facts, and statement of the efforts to meet and confer before filing the motion.
20 The memorandum of points and authorities contained no citation to relevant case law, and merely cited
21 the relevant provisions of Rule 37. Of the \$2,306.50 billed before the date of the hearing, the court will
22 allow 4 hours of the law clerk’s time at the rate of \$160/hr. or \$640.00, and 2 hours of time for the
23 associate attorney involved in the preparation of the motion at the rate of \$205/hr, or \$410, for a total of
24 \$1,050.00.

25
26 ¹A review of the court’s docket reflects that on February 8, 2010, Plaintiffs filed a return of
27 summons (Dkt. #23) reflecting that summons and service of complaint was served on Defendant
28 Kearney on February 2, 2010. However, Defendant Kearney has not filed an Answer or otherwise
appeared.

The memorandum also seeks to recover 16.9 hours, or \$4,929.50 for preparing for Mr. Kearney's deposition prior to the day of the deposition. The court does not doubt that counsel and staff actually spent the time reflected on the billing slips. However, the court finds that it would be inequitable to assess Mr. Kearney all of the fees and costs sought. Although Mr. Kearney's deposition did not take place when it was initially scheduled, the preparation for his deposition was not time entirely lost to the Plaintiffs and their counsel. Of the \$4,929.50 charged for preparation for Mr. Kearney's deposition prior to the date of his deposition (i.e. through August 24, 2010), the court will allow one-half, or \$2,464.75.

Costs in the amount of \$487.50 is requested. The court will allow \$152.50 for the services provided by Esquire Deposition Services, Las Vegas, for Mr. Kearney's non-appearance. However, the court will disallow the amount sought for computerized legal research as the motion contained nothing more than a citation to Rule 37.

Having reviewed and considered the matter,

IT IS ORDERED the court will assess sanctions in favor of the Plaintiffs against Defendant Adam Kearney in the amount of **\$3,667.25** which represents \$3,514.75 in attorneys fees incurred for deposition preparation and preparation of the motion to compel, and \$152.50 in costs.

Dated this 2nd day of February, 2011.

George Foley Jr.
GEORGE FOLEY, JR.
United States Magistrate Judge